fits, of such agreement. *Percival* v. *Colonial Inv. Co.*, 140 Iowa 275, 115 N. W. 941; *Ferguson* v. *Worrall*, 31 Ky. Law Rep. 219, 101 S. W. 966, 9 L. R. A. (N. S.) 1261. Other courts maintain that the covenant runs with the land because of the evident intention of the parties to that effect. *National Life Ins. Co.* v. *Lee*, 75 Minn. 157, 77 N. W. 794; *Noble* v. *Kendall*, 120 Mich. 545, 79 N. W. 810. Of course, where the obligation to pay is, in the original contract, expressly or impliedly made a lien on the lot of the non-builder, it attaches to the lot itself and passes with it into the hands of whatever person the lot may be. *Parsons* v. *Baltimore, etc., Ass'n*, 44 W. Va. 335, 29 S. E. 999, 67 Am. St. Rep. 769; *Osteen* v. *Bultman*, 94 S. C. 496, 78 S. E. 445; *Arnold* v. *Chamberlain*, 14 Tex. Civ. App. 634, 39 S. W. 201; *Mott* v. *Oppenheimer*, 135 N. Y. 312, 31 N. E. 1097, 17 L. R. A. 409. So also, the obligation to pay may be expressly assumed by grantees of the original party wall contractors. *Ellensburg Lodge* v. *Collins* (Wash.), 122 Pac. 602. In some states the obligation to pay is made to run with the land by statute. *Irvin* v. *Peterson*, 25 La. Ann. 300; *Voigt* v. *Wallace*, 179 Pa. St. 520, 36 Atl. 315. The ruling in the principal case accords with the sounder doctrine, but the weight of authority is perhaps *contra*.

PRESCRIPTION—DISABILITY OF SERVIENT OWNER—BURDEN OF PROOF.—The defendant in a suit to try title to land asserted a right of way by prescription. *Held*, the burden of proof rests on the defendant to show that the owners of the servient estate were free from legal disability during the prescriptive period. *West* v. *City of Houston* (Tex.), 163 S. W. 679.

As a general rule, it is not necessary to allege or prove mere matters of defense, which come more properly from the other side. STEPHEN, PLEADING, 350. It is settled that capacity to contract is presumed, and one who would defend on the ground of *non sui juris* must bear the burden of proof. *Moore* v. *Sawyer*, 157 Fed. 826. This general rule has been applied in the case of prescriptive easements. *Fankboner* v. *Corder*, 127 Ind. 164, 26 N. E. 766. But the contrary has also been held. *Saunders* v. *Simpson*, 97 Tenn. 382, 37 S. W. 195.

A similar question has arisen in regard to the nature of the use. The weight of authority holds that the servient owner has the burden of showing that the use is merely permissive. *Fleming* v. *Howard*, 150 Cal. 28, 87 Pac. 908; *Smith* v. *Pennington*, 122 Ky. 355, 91 S. W. 730, 8 L. R. A. (N. S.) 149; *Majerus* v. *Barton* (Neb.), 139 N. W. 208. *Contra, Bradley Co.* v. *Dudley*, 37 Conn. 136.

It is hard to see why an exception to a settled rule should be made in the case of easements, even on the suggested theory that the capacity of the servient owner is an essential element in prescription, and so should be proved by one claiming thereunder. The same theory would apply with equal force in the case of contracts. Possibly the courts have been influenced by the feeling that prescriptive rights are in their nature encroachments, and ought not to be favored.

REFORMATION OF INSTRUMENTS—EXECUTORY LAND CONTRACT—ENFORCEMENT.—Through mutual mistake there was a failure to mention in a